



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

EPA-R08-OAR-2012-0958; FRL- 9765-8

Approval and Promulgation of Air Quality Implementation Plans; Utah; Maintenance Plan for the 1997 8-Hour Ozone Standard for Salt Lake County and Davis County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to partially approve and partially disapprove State Implementation Plan (SIP) revisions submitted by the Governor of Utah on March 22, 2007. The SIP revision is the State of Utah's maintenance plan for the 1997 8-hour ozone standard for Salt Lake County and Davis County, along with associated rules: R307-101-2, "Definitions;" R307-110-13, "Section IX, Control Measures for Area and Point Sources, Part D, Ozone;" R307-320, "Ozone Maintenance Areas and Ogden City: Employer-Based Trip Reduction Program;" R307-325, "Ozone Nonattainment and Maintenance Areas: General Requirements;" R307-326, "Ozone Nonattainment and Maintenance Areas: Control of Hydrocarbon Emissions in Petroleum Refineries;" R307-327, "Ozone Nonattainment and Maintenance Areas: Petroleum Liquid Storage;" R307-328, "Ozone Nonattainment and Maintenance Areas and Utah and Weber Counties: Gasoline Transfer and Storage;" R307-335, "Ozone Nonattainment and Maintenance Areas: Degreasing and Solvent Cleaning Operations;" R307-340, "Ozone Nonattainment and Maintenance Areas: Surface Coating Processes;" R307-341, "Ozone Nonattainment and Maintenance Areas: Cutback Asphalt;" and R307-342, "Ozone Nonattainment and Maintenance Areas: Qualification of Contractors and Test Procedures for Vapor Recovery Systems for Gasoline Delivery Tanks." This action is being taken under sections 107 and 110 of the Clean

Air Act (Act).

DATES: Comments must be received on or before [insert date 30 days after publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2012-0958, by one of the following methods:

- www.regulations.gov. Follow the on-line instructions for submitting comments.
- E-mail: ostendorf.jody@epa.gov
- Fax: (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: **Carl Daly**, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop St., Denver, Colorado 80202-1129.
- Hand Delivery: **Carl Daly**, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop St., Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R08-OAR-2012-0958.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business

Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov web site is an anonymous access system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop St., Denver, Colorado

80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jody Ostendorf, Air Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop St., Denver, Colorado 80202-1129, (303) 312-7814, ostendorf.jody@epa.gov

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. General Information
- II. Background of State Submittals
- III. EPA Analysis of the Maintenance Plan for the 1997 8-Hour Ozone Standard for Salt Lake County and Davis County
- IV. EPA Analysis of the Associated Rule Revisions
- V. Proposed Action
- VI. Statutory and Executive Order Reviews

Definitions

For the purpose of this document, we are giving meaning to certain words as follows:

- (i) The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.

(iii) The initials SIP mean or refer to State Implementation Plan.

(iv) The words State or Utah mean the State of Utah, unless the context indicates otherwise.

I. General Information

What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- b. Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- d. Describe any assumptions and provide any technical information and/or data that you used.

- e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- f. Provide specific examples to illustrate your concerns, and suggest alternatives.
- g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- h. Make sure to submit your comments by the comment period deadline identified.

II. Background of State Submittals

A. Regulatory Context

Under the Clean Air Act (CAA) enacted in 1970, EPA established national ambient air quality standards (NAAQS) for certain pervasive air pollutants, such as photochemical oxidant, carbon monoxide, and particulate matter. The NAAQS represent concentration levels below which public health and welfare are protected. The 1970 Act also required states to adopt and submit State Implementation Plans (SIPs) to implement, maintain, and enforce the NAAQS.

From time-to-time, the CAA requires SIP revisions to account for new or amended NAAQS or to meet other changed circumstances. The CAA was significantly amended in 1977, and under the 1977 Amendments, EPA promulgated attainment status designations for all areas of the country with respect to the NAAQS.

The CAA requires EPA to periodically review and revise the NAAQS, and in 1979, EPA established a new NAAQS of 0.12 ppm for ozone, averaged over 1 hour. This new NAAQS replaced the oxidant standard of 0.08 ppm. See 44 FR 8202 (February 8, 1979). Areas designated nonattainment for oxidant were considered to be nonattainment for ozone as well. Part D of CAA Title I requires special measures for areas designated nonattainment. In 1984,

EPA approved Utah's SIP for the 1-hour ozone standard for the Salt Lake County and Davis County nonattainment area (49 FR 32575).

Congress significantly amended the CAA again in 1990. Under the 1990 Amendments, each area of the country that was designated nonattainment for the 1-hour ozone NAAQS, including Salt Lake County and Davis County, was classified by operation of law as marginal, moderate, serious, severe, or extreme nonattainment depending on the severity of the area's air quality problem. The ozone nonattainment designation for Salt Lake County and Davis County continued by operation of law according to section 107(d)(1)(C)(i) of the CAA, as amended in 1990. Furthermore, the area was classified by operation of law as moderate for ozone under CAA section 181(a)(1).

Under CAA section 175A, states may request redesignation of a nonattainment area to attainment if monitoring data showed that the area has met the NAAQS and if the area meets certain other requirements. On July 18, 1995, both Salt Lake and Davis Counties were found to be attaining the 1-hour ozone standard (60 FR 36723). On July 17, 1997, EPA approved the State's request to redesignate Salt Lake and Davis Counties to attainment for the 1-hour ozone standard. As part of that action, EPA approved the State's 1-hour ozone maintenance plan (62 FR 38213).

On July 18, 1997, EPA promulgated an 8-hour ozone NAAQS of 0.08 ppm (62 FR 38894). This standard was intended to replace the 1-hour ozone standard. On April 30, 2004, EPA designated areas of the country for the 1997 8-hour ozone standard (69 FR 23857). EPA designated all areas in Utah, including Salt Lake County and Davis County, as unclassifiable/attainment for the 1997 8-hour ozone NAAQS (69 FR 23940).

Also, on April 30, 2004, EPA revoked the pre-existing 1-hour NAAQS (69 FR 23951, 23996; 40 CFR 50.9(b)). As part of this rulemaking, EPA established certain requirements to prevent backsliding in those areas that were designated as nonattainment for the 1-hour ozone standard at the time of designation for the 8-hour ozone standard, or that were redesignated to “attainment” but subject to a maintenance plan, as is the case for Salt Lake County and Davis County. These requirements are codified at 40 CFR 51.905.

In the case of Utah, one of these requirements was to submit a maintenance plan for the 1997 8-hour ozone standard. On March 22, 2007, the Governor of Utah submitted a maintenance plan for the 1997 8-hour ozone standard for Salt Lake County and Davis County, and associated rule revisions. In this notice, EPA is proposing to act on this March 22, 2007 maintenance plan and rule revisions.

In 2008, EPA promulgated a lower 8-hour ozone standard – 0.075 ppm. 73 FR 16436. The 2008 ozone standard retains the same general form and averaging time as the 0.08 ppm standard set in 1997. Effective July 20, 2012, Salt Lake County and Davis County were designated Unclassifiable/Attainment for this lower standard. 77 FR 30088, 30151.

B. Ambient Ozone Conditions

The 1997 ozone NAAQS is attained when the three-year average of the annual fourth-highest daily maximum 8-hour average ambient ozone concentration (also referred to as the “design value”) is less than or equal to 0.08 ppm at all monitoring sites within an air quality planning area. Forty CFR part 50, Appendix I, section 2.3, directs that the third decimal place of the computed three-year average be rounded; values equal to or greater than 0.005 are rounded up. Thus, under our regulations, a computed three-year ozone concentration of 0.085 ppm is the

smallest value that is considered to be greater than 0.08 ppm and, thus, a violation of the standard.

A review of the data gathered at the ozone monitoring sites in Salt Lake County and Davis County from 2000-2011¹ shows the area has been attaining the 8-hour ozone NAAQS except for the 2005-2007 period, which had a design value of 0.085 ppm. As noted above, EPA designated Salt Lake County and Davis County unclassifiable/attainment for the lower 2008 ozone standard (0.075 ppm) based on monitored values for 2008-2010. The following table shows design values for each year from 2000 through 2011:

Table 1. Salt Lake and Davis Counties Three-Year Average of the 4th Highest Ozone Value (ppm)

Monitoring Site (County)	2000-2002	2001-2003	2002-2004	2003-2005	2004-2006	2005-2007	2006-2008	2007-2009	2008-2010	2009-2011
Beach (Salt Lake)	0.081	0.081	0.078	0.079	0.081	0.083	0.079	0.076	0.072	0.072
Bountiful (Davis)	0.082	0.083	0.078	0.079	0.080	0.085	0.080	0.077	0.074	0.071
Cottonwood (Salt Lake)	0.076	0.080	0.079	0.080	0.080	0.083	0.082	0.077	0.075	0.073
Hawthorne (Salt Lake)	0.077	0.080	0.078	0.077	0.077	0.081	0.078	0.076	0.074	0.074

¹ Data for 2012 have not been certified yet.

Herriman (Salt Lake)	0.078	0.076	0.076	0.076	0.078	0.080	n/a ²	n/a	n/a	n/a
West Valley (Salt Lake)	0.079	0.080	0.076	0.078	0.078	0.081	n/a ²	n/a	n/a	n/a

III. EPA Analysis of the Maintenance Plan for the 1997 8-Hour Ozone Standard for Salt Lake County and Davis County

As noted above, 40 CFR 51.905 requires a maintenance plan for the 1997 8-hour ozone standard, pursuant to section 110(a)(1) of the CAA. In the case of areas like Salt Lake County and Davis County, that have an approved maintenance plan for the 1-hour ozone standard and are unclassifiable/attainment for the 8-hour standard, 40 CFR 51.905(a)(4)(ii) specifies that the maintenance plan must provide for continued maintenance of the 8-hour standard for 10 years following designation – i.e., until 2014 – and must include contingency measures. In May 20, 2005 guidance entitled “Maintenance Plan Guidance Document for Certain 8-hour Ozone Areas Under Section 110(a)(1) of the Clean Air Act” (“2005 guidance”), EPA provided its interpretations of the components that 40 CFR 51.905 maintenance plans should include. These components are: 1) an attainment inventory, 2) a maintenance demonstration, 3) ambient air quality monitoring, 4) a contingency plan, and 5) verification of continued attainment.

In addition, 40 CFR 51.905(a)(4)(i) restricts states from removing certain “applicable requirements,” as defined in 40 CFR 51.900(f), from the SIP. States may shift applicable

² These two monitors were shut down in Sept. 2007.

requirements to contingency measures if such a shift is consistent with CAA sections 110(l) and 193. As a general proposition, EPA may not approve a SIP revision that is inconsistent with CAA section 110(l) or CAA section 193.

Below, we evaluate whether the Utah maintenance plan is consistent with the relevant statutory and regulatory requirements, as we have interpreted them.

A. Attainment Emission Inventory

As recommended by EPA, the State used 2002 as the year for the maintenance plan's attainment inventory, and the inventory reflects typical summer day emissions of volatile organic compounds (VOCs) and oxides of nitrogen (NO_x). The emission inventory is divided into four major source categories: point sources, area sources, mobile sources, and naturally occurring biogenic sources. Mobile sources are further divided into on-road and non-road categories. The following tables present the 2002 attainment inventory, as well as the State's projected inventories through 2014.

Table 2. Salt Lake and Davis Counties Source Category Totals for VOCs (tons/day)

	2002	2005	2008	2011	2014
Point Source	11.24	11.21	11.66	11.96	12.36
Area Source	89.32	92.42	96.30	101.86	107.75
Biogenic Source	120.26	120.26	120.26	120.26	120.26
Mobile On- Road	57.66	44.70	35.36	29.11	24.52

Mobile Non-Road	29.55	25.47	20.90	18.42	16.57
Total	308.03	294.06	284.48	281.61	281.46
Attainment	308.03	308.03	308.03	308.03	308.03

Table 3. Salt Lake and Davis Counties Source Category Totals for NO_x (tons/day)

	2002	2005	2008	2011	2014
Point Source	39.27	38.09	37.78	36.75	36.82
Area Source	11.36	10.08	10.79	11.82	12.82
Mobile On-Road	98.89	85.52	65.47	49.45	35.92
Mobile Non-Road	83.87	80.35	72.56	63.48	51.30
Total	233.39	214.04	186.60	161.50	136.86
Attainment	233.39	233.39	233.39	233.39	233.39

The attainment inventory was prepared in accordance with EPA guidance and we find that it accurately portrays typical summer day emissions during the 2002 ozone season (June – August).

B. Maintenance Demonstration

Under EPA’s interpretation of the CAA and its regulations, maintenance of an ozone

standard generally may be demonstrated through modeling or through an emissions inventory approach. Utah chose the latter approach, which involves a showing that future emissions of ozone precursors will not exceed the level of such precursors in the attainment year inventory.

The maintenance plan's projections, as reflected in Tables 2 and 3 above, show that future emissions of VOCs and NO_x will not exceed the 2002 inventory values. However, primarily due to high monitored ambient ozone concentrations in the 2005 ozone season, the area recorded a violation of the 1997 8-hour ozone standard for the 2005-2007 seasons. This violation casts doubt on the use of the 2002 emissions inventories as representative of the levels of emissions that are consistent with maintaining the standard. However, the circumstances presented here provide countervailing considerations:

1. Since the time of the area's designation to attainment in 2004, the only monitored violation occurred during 2005-2007. As stated above, the 1997 8-hour ozone standard is attained at a design value of 0.084, and the design value for 2005-2007 was 0.085 ppm – the lowest value that can represent a violation.
2. In 2005, the area monitored significantly higher 4th high maximum values than it had monitored in the previous four years and than it has monitored since.
3. In 2006-2008, the area immediately returned to attainment and has continued to attain the standard. Complete quality-assured data for 2007-2009, 2008-2010, 2009-2011, and preliminary data for 2012, show that the area has continuously maintained the standard.
4. Under the applicable regulatory requirement, 40 CFR 51.905(a)(4), the State must demonstrate maintenance for ten years after designation, or until 2014.

5. In evaluating the potential for the area, given its continued maintenance during and subsequent to 2008, EPA takes into consideration the fact that, in order for the area to violate the standard in 2013-2014, the area would have to experience significantly higher 4th high maximums than it experienced in 2005. We find this prospect to be highly unlikely, particularly given the State's projected emissions trends, as reflected in Tables 2 and 3 above.
6. Mobile source emissions account for a very large portion of the overall emissions inventory, and federal motor vehicle control standards, combined with fleet turnover, will continue to reduce relevant emissions through 2014.

Based on this unique combination of factors, we are proposing to approve the maintenance demonstration. However, we are also proposing disapproval in the alternative should comments convince us that approval is not consistent with the CAA.

C. Ambient Air Quality Monitoring/Verification of Continued Attainment

EPA's 2005 guidance indicates that, "The State should continue to operate air quality monitors in accordance with 40 CFR 58 to verify maintenance of the 8-hour ozone standard in the area." The maintenance plan (section 4) describes the ozone monitoring network, presents monitoring data, and includes the State's commitment to continue to operate and maintain an adequate monitoring network in accordance with 40 CFR 58. For the period 1999 through 2005, there were six ozone monitors in Salt Lake and Davis Counties. The plan indicates that the State will continue to conduct annual reviews of the network and gain EPA approval before making any changes to the existing network.

Regarding verification of continued attainment, our guidance indicates that the plan

should indicate how the State will track the progress of the maintenance plan. One option mentioned is to periodically update the emission inventory. In the maintenance plan, the State includes a section 7 entitled, “Verification of Continued Ozone Maintenance.” In it, the State commits to update the VOC and NO_x emission inventories for Salt Lake and Davis Counties at least once every three years, and to compare the updated inventories to the plan’s projections to verify that emissions are within acceptable limits to maintain the standard. EPA is proposing to approve this section of the maintenance plan.

D. Contingency Measures

EPA’s 2005 guidance states that the contingency plan should include measures to ensure that a violation of the 8-hour ozone NAAQS is promptly corrected. EPA’s interpretation of the section 51.905 contingency measures requirement is consistent with its interpretation of the CAA section 175A contingency plan requirement. Thus, the plan must include the State’s enforceable commitment to adopt and implement the contingency measures in a timely fashion once they’re triggered. The plan must identify the measures to be adopted, a schedule and procedure for adoption and implementation, and a specific time limit for action by the State.

A pre-adopted contingency measure is not required; rather, the plan may include a list of potential measures from which the State could choose should a violation occur. The purpose of the contingency measures is to achieve VOC and/or NO_x emission reductions to correct a violation.

The State’s maintenance plan provides that the contingency trigger date is the date that certified data show that a monitored violation of the 1997 ozone standard has occurred. The maintenance plan describes the State’s timeline to implement contingency measures. Within 60

days of the contingency trigger date, the Utah Division of Air Quality will begin evaluation of potential contingency measures. Within 180 days of the contingency trigger date, the Division of Air Quality will present the recommended contingency measures to the Utah Air Quality Board. The Air Quality Board will then hold public hearings to consider the recommended contingency measures along with any other contingency measures the Air Quality Board deems appropriate. The plan indicates that the necessary contingency measures will be adopted and implemented within 24 months of the contingency trigger date.

Possible contingency measures include:

1. Alert Day Enhancements – A public outreach campaign to educate individuals of smart choices, such as discouraging refueling vehicles or mowing lawns during peak ozone periods.
2. Reduction of Truck Stop Idling – The plan indicates that Utah could adopt a rule limiting vehicle idling time while vehicles are not actually moving.
3. Heavy Equipment Emission Control Program – According to the plan, this “could include incentives to encourage after-market retrofit of heavy-duty diesel construction equipment and increased use of compressed natural gas-fueled school and [Utah Transit Authority] buses.”
4. Reduce Emissions of VOCs – Voluntary commitments or regulatory measures to reduce VOC emissions from major sources.
5. Identification of High-Polluting Vehicles – Use of remote sensing technology to identify smoking or high-polluting vehicles and provide incentives for repair of these vehicles.

6. Establish an Offset Ratio for NO_x – Lower the threshold at which offsets are required for new NO_x sources.
7. Implement More Effective Low-NO_x Burner Controls – Require sources to replace existing burners with low-NO_x burners.
8. Other VOC or NO_x emission control measures as appropriate.

On November 2, 2006, during the State's public comment period on its draft maintenance plan, we provided comments to the State on the proposed contingency measure portion of the plan. We noted that several of the contingency measures included on the State's list of potential measures were voluntary measures. We advised the State that voluntary measures do not function or qualify as contingency measures. The State disagreed and retained the voluntary measures in its list of contingency measures.

In today's notice, we are proposing to approve contingency measure numbers 2 and 7 on the list above, because these measures would impose regulatory requirements. We are proposing to approve measure number 4 to the extent it prescribes measures that are enforceable and regulatory, as opposed to voluntary measures. We also are proposing to approve measure number 8, with the understanding that any contingency measure under this category must be enforceable, not voluntary, to be considered valid under our proposed approval.

We are proposing to disapprove those measures on the list above that are voluntary: measure numbers 1 and 2, the portion of measure number 4 that includes voluntary measures, and measure number 5. While we have not required that potential contingency measures be effective without further action by the state, we interpret the CAA as requiring measures that will be enforceable. Voluntary measures may not be widely implemented and, thus, cannot be relied

on to ensure prompt emission reductions to correct a violation. We also are proposing to disapprove measure number 6 on the list of contingency measures because it will achieve emissions reductions only if new source construction occurs. Thus, it is not a measure that will ensure prompt correction of a violation.

Because we consider those regulatory contingency measures that we are proposing to approve to be sufficient to satisfy the contingency measure requirements for this maintenance plan, our disapproval of the other contingency measures would not trigger a deadline for EPA to promulgate a federal implementation plan under CAA section 110(c).

E. Other Aspects of the Maintenance Plan

1. VOC Reasonably Available Control Technology (RACT)

40 CFR 51.904(a)(4) provides that applicable requirements in a 1-hour ozone plan, as defined in 40 CFR 51.900(f), may not be removed from the SIP. It allows a state to move such requirements to contingency measures, but only if the requirements of CAA sections 110(l) and 193 are met.

In the 8-hour ozone maintenance plan, the State indicates that all RACT requirements from the 1-hour ozone SIP will remain in place. However, later in the 8-hour ozone maintenance plan, Utah proposes to remove the approval orders for Hill Air Force Base from the SIP. When we approved Utah's 1-hour maintenance plan and redesignation request, we approved and incorporated these orders to satisfy applicable CAA RACT requirements. 62 FR 28399; 62 FR 38214-38215. In place of these approval orders, the State claims that Maximum Achievable Control Technology (MACT) requirements, New Source Performance Standards (NSPS), and generic State rules will provide a more stringent substitute to "regulate over eighty-six percent of

the total VOC emissions originating from Hill Air Force Base.” According to the State, the “remaining fourteen percent” will be regulated by “the forthcoming Military MACT.” The State did not propose to move the approval orders to the contingency measures.

We find that the State’s generic statements regarding equivalency, without a specific, comparative analysis of the units and pollutants involved, are not sufficient to satisfy the requirements of CAA sections 110(l) and 193. We are unable to conclude that the various MACT, NSPS, and generic State rules are as or more stringent than the approval orders. Furthermore, we are unclear what the State is referring to when it mentions a forthcoming Military MACT. Thus, we are proposing to disapprove the State’s proposal to remove the approval orders for Hill Air Force Base from the SIP.

Because these approval orders would remain a part of the federally enforceable SIP should we finalize our proposed disapproval, our disapproval of the State’s proposal to remove the approval orders would not trigger a FIP deadline.

The State has also submitted revisions to the following generic VOC RACT rules that it relied on in the 1-hour maintenance plan:

R307-325, General Requirements

R307-326, Control of Hydrocarbon Emissions in Petroleum Refineries

R307-327, Petroleum Liquid Storage

R307-328, Gasoline Transfer and Storage

R307-335, Degreasing and Solvent Cleaning Operations

R307-340, Surface Coating Processes

R307-341, Cutback Asphalt

R307-342, Qualification of Contractors and Test Procedures for Vapor Recovery Systems
for Gasoline Delivery Tanks

These rules are further discussed in Section IV, “EPA Analysis of the Associated Rule Revisions,” of this notice.

2. NO_x RACT

For the PacifiCorp Gadsby Power Plant, the State asserts in the 8-hour maintenance plan that “current” NO_x emission limitations in Section IX, Part H of the SIP are equivalent to the NO_x emission limitations that the State approved as RACT in conjunction with the 1-hour ozone maintenance plan. It appears that Utah is using the word “current” to refer to the emission limit contained in Utah’s 2005 PM₁₀ maintenance plan. We think this limit is a daily NO_x limit for the entire plant of 6.57 tons per day. However, Utah does not specify this in the 8-hour ozone maintenance plan and does not explain how this limit is equivalent to the NO_x RACT limits for boilers 1, 2, and 3 that EPA approved with the 1-hour ozone maintenance plan in 1997. See 62 FR 28403; 62 FR 38215-38216.³ Furthermore, after we proposed to disapprove Utah’s 2005 PM₁₀ maintenance plan, the Governor withdrew it. Thus, the version of Section IX, Part H that the State describes in the 8-hour ozone maintenance plan is not currently before us for consideration. As a result of these issues, we are proposing to disapprove the State’s proposal to remove the NO_x RACT limits that we approved for boilers 1, 2, and 3 in 1997.

Because these NO_x RACT limits would remain a part of the federally enforceable SIP, should we finalize our proposed disapproval, our disapproval of the State’s proposal to remove

³ In our 1997 action, we incorporated by reference Utah’s February 3, 1994 approval order for PacifiCorp Gadsby that specified hourly NO_x limits of 179, 204, and 203 pounds per hour for boilers 1, 2, and 3 individually.

the NO_x RACT limits would not trigger a FIP deadline.

3. Employer-based trip reduction program

The 8-hour maintenance plan states that the employer-based trip reduction program, contained in Utah rule R307-320, is included in the 1-hour maintenance plan, but that no reduction credit is claimed for it. The maintenance plan indicates that the program is retained as a control measure in the 8-hour plan.

We note that we did not approve R307-320 when we acted on the 1-hour maintenance plan and that it is not currently part of the EPA-approved SIP. We also note that the State claimed no reduction credit for the employer-based trip reduction program in the 1-hour maintenance plan. Because the program only applies to governmental employers and does not apply to private employers of the same size, the program is inconsistent with CAA section 118. Specifically, Congress has only waived the sovereign immunity of the federal government for purposes of control and abatement of air pollution to the extent that nongovernmental entities are regulated. Thus, we are proposing to disapprove section 5.g of the maintenance plan and R307-320.

Our disapproval of section 5.g of the maintenance plan and R307-320 would not trigger a FIP deadline because an employer-based trip reduction program is not required.

IV. EPA Analysis of the Associated Rule Revisions

Along with the maintenance plan for the 1997 8-hour ozone standard for Salt Lake and Davis Counties, the State also submitted associated rule revisions. Some of these are relied on in the maintenance plan to demonstrate maintenance of the 1997 8-hour ozone standard. We evaluate each of these rules below.

A. R307-101-2. “Definitions.” The revisions to this rule that the State submitted with the maintenance plan were effective March 9, 2007. However, on April 17, 2008, the State submitted further revisions to the rule that were effective on February 8, 2008. Our review indicates that the 2008 version of the rule superseded the 2007 version. We approved the 2008 version of the rule on September 2, 2008 and incorporated it by reference into the Code of Federal Regulations. See 73 FR 51222. Thus, in this proposed action we are not acting on the 2007 version of R307-101-2.

B. R307-110-13. “Section IX, Control Measures for Area and Point Sources, Part D, Ozone.” This rule merely incorporates the maintenance plan into Utah’s rules. To the extent we are proposing to approve the maintenance plan, we are proposing to approve this rule. We do not intend to approve the incorporation of the parts of the maintenance plan that we are proposing to disapprove.

C. R307-320. “Ozone Maintenance Areas and Ogden City: Employer-Based Trip Reduction Program.” As noted above, the program only applies to governmental employers and does not apply to private employers of the same size. Thus, the program is inconsistent with CAA section 118, and we are proposing to disapprove the rule.

D. R307-325. “Ozone Nonattainment and Maintenance Areas: General Requirements.” Utah revised this rule to clarify the purpose, applicability, and compliance schedule. Utah moved language regarding alternate methods of control from this rule to individual VOC RACT rules, as described in section IV.E below. Additionally, Utah deleted language because it is not needed in this rule or any other rule, and Utah made minor grammatical corrections. Utah also made administrative revisions to the rule’s title to replace the reference to “Salt Lake and Davis

Counties” with a reference to “Ozone Nonattainment and Maintenance Area.” Per section 110(l) of the CAA, EPA, in November 2, 2006 comments to Utah, requested that Utah demonstrate that deleting the generic RACT requirement from R307-325 would not interfere with attainment, maintenance, or any other requirement of the CAA. In our November 2, 2006 comments, we clarified that this demonstration could consist of a State certification that all sources potentially subject to the rule were controlled through adoption of specific RACT provisions. The State provided that certification in its response to comments (contained in the docket for this action), and further stated that any sources not controlled through source-specific RACT determinations would be addressed by the NO_x RACT waiver that EPA approved in 1997 (See 62 FR 38215). Therefore, we are proposing to approve these changes.

E. Alternate Methods of Control (AMOC) and EPA’s Concurrence Requirement

The State is proposing revisions to R307-326, R307-327, R307-328, R307-335, R307-340, and R307-342, which are addressed individually below. For each of these rules, the State wishes to include AMOC language that was previously included in R307-325. That language states:

“Any person may apply to the executive secretary for approval of an alternate test method, an alternate method of control, an alternate compliance period, an alternate emission limit, or an alternate monitoring schedule. The application must include a demonstration that the proposed alternate produces an equal or greater air quality benefit than that required by [this rule], or that the alternate test method is equivalent to that required by these rules. The executive secretary shall obtain concurrence from EPA when approving an alternate test method, an alternate method of control, an alternate

compliance period, an alternate emission limit, or an alternate monitoring schedule.”

The Utah Department of Environmental Quality (DEQ) has confirmed that this regulatory language requiring concurrence from EPA on any AMOC applies to all the provisions in these rules that allow for DEQ to alter the compliance requirements of the rule. EPA would like to clarify its position on what is required for EPA to concur on such changes.

Section 110(i) of the CAA specifically precludes states from changing the requirements of the SIP that apply to any stationary source except through SIP revisions approved by EPA. SIP revisions will be approved by EPA only if they meet all requirements of section 110 of the Act and the implementing regulations at 40 CFR Part 51. See, e.g., CAA section 110(l); 40 CFR 51.104. Section 51.104(d) specifically states that in order for a variance to be considered for approval as a SIP revision, the state must submit it in accordance with the requirements of 40 CFR 51.104, which includes the public notice, comment and hearing provisions of 40 CFR 51.102.

Furthermore, the AMOC provision does not contain specific, objective, and replicable criteria for determining if such “alternate methods” are in fact at least as effective as the required methods in terms of emission rates and ambient impacts. For purposes of meeting CAA requirements, EPA concurrence in the form of a SIP approval is required for any of the alternate compliance provisions throughout R307-326, R307-327, R307-328, R307-335, R307-340, and R307-342. This includes approval of an alternate method of control, an alternate test method, an alternate compliance period, an alternate emission limit, a variance, or an alternate monitoring schedule. The public notice process of a SIP approval will allow EPA and the public to determine whether any new compliance terms approved by the executive secretary continue to

assure maintenance of the ambient standard.⁴

F. R307-326. “Ozone Nonattainment and Maintenance Areas: Control of Hydrocarbon Emissions in Petroleum Refineries.” Utah made additions and modifications to clarify the purpose, applicability, definitions, monitoring requirements, alternative method of control provisions, and compliance schedule. Additionally, Utah deleted language because it is not needed in this rule or any other rule. Utah has made administrative revisions to the rule’s title where the reference to Salt Lake and Davis Counties was simply replaced with “ozone maintenance area.” EPA is proposing to approve these changes. However, for purposes of clarification, EPA interprets the following provisions in R307-326 (in addition to any other request for an AMOC that may arise outside of these provisions) as being subject to the requirement in R307-326-10(1) for EPA concurrence, and thus subject to EPA’s general statement about alternate methods of control, above:

1. R307-326-4(3).
2. R307-326-6(3).
3. In R307-326-7, the provision that reads, “or controlled by other methods, provided the design and effectiveness of such methods are documented, submitted to, and approved by the executive secretary.”
4. R307-326-9(5)(a).
5. In R307-326-10(3), the provision that reads, “or approved by the executive secretary.”

In addition, we interpret R307-326-10(2), which requires an owner or operator to repair a

⁴ By adopting a generic SIP provision consistent with the EPA guidance known as White Paper Number 2, a state may be able to streamline EPA’s SIP approval process for an AMOC. White Paper Number 2, Attachment B, envisions the use of the Title V permit process to establish alternative requirements.

malfunctioning control device within 15 days or other period approved by the executive secretary, as not excusing any period of violation of the control requirements in R307-326.

G. R307-327. “Ozone Nonattainment and Maintenance Areas: Petroleum Liquid Storage.”

Utah made additions and modifications to clarify the purpose, applicability, general requirements, alternate method of control provisions, and compliance schedule. Additionally, Utah deleted language because it is not needed in this rule or any other rule. Utah has made administrative revisions to the rule’s title where the reference to Salt Lake and Davis Counties was simply replaced with “ozone maintenance area.” EPA is proposing to approve these changes. However, for purposes of clarification, EPA interprets the following provisions in R307-327 (in addition to any other request for an AMOC that may arise outside of these provisions) as being subject to the requirement in R307-327-7(1) for EPA concurrence, and thus subject to EPA’s general statement about alternate methods of control, above:

1. In R307-327-4(1), the provision that reads, “or alternative equivalent controls, provided the design and effectiveness of such equipment is documented and submitted to and approved by the executive secretary.”
2. R307-327-6(3)(d).
3. In R307-327-7(3), the provision that reads, “or approved by the executive secretary.”

In addition, we interpret R307-327-7(2), which requires an owner or operator to repair a malfunctioning control device within 15 days or other period approved by the executive secretary, as not excusing any period of violation of the control requirements in R307-327.

H. R307-328. “Ozone Nonattainment and Maintenance Areas and Utah and Weber Counties: Gasoline Transfer and Storage.” Utah made additions and modifications to clarify the

purpose, applicability, definitions, transport vehicle provisions, alternate method of control provisions, and compliance schedule. Additionally, Utah deleted language because it is not needed in this rule or any other rule. Utah has made administrative revisions to the rule's title where the reference to Salt Lake and Davis Counties was simply replaced with "ozone maintenance area." EPA is proposing to approve these changes. However, for purposes of clarification, EPA interprets the following provisions in R307-328 (in addition to any other request for an AMOC that may arise outside of these provisions) as being subject to the requirement in R307-328-8(1) for EPA concurrence, and thus subject to EPA's general statement about alternate methods of control, above:

1. In R307-328-4(6), the provision that reads, "or alternate equivalent methods...The design effectiveness of such equipment and the operating procedures must be documented and submitted to and approved by the executive secretary."
2. In R307-328-4(9), the provision that reads, "The frequency of tests may be altered by the executive secretary upon submittal of documentation which would justify a change."
3. In R307-328-5(1)(c), the provision that reads, "or their equivalent which have been approved by the executive secretary."
4. In R307-328-6(4), the provision that reads, "or equivalent equipment provided the design and effectiveness of such equipment are documented and submitted to and approved by the executive secretary."
5. In R307-328-8(3), the provision that reads, "or approved by the executive secretary."

In addition, we interpret R307-328-8(2), which requires an owner or operator to repair a malfunctioning control device within 15 days or other period approved by the executive

secretary, as not excusing any period of violation of the control requirements in R307-328.

I. R307-335. “Ozone Nonattainment and Maintenance Areas: Degreasing and Solvent Cleaning Operations.” Utah made additions and modifications to clarify the purpose,

applicability, definitions, alternate method of control provisions, and compliance schedule.

Additionally, Utah deleted language because it is not needed in this rule or any other rule. Utah has made administrative revisions to the rule’s title where the reference to Salt Lake and Davis Counties was simply replaced with “ozone maintenance area.” EPA is proposing to approve these changes. However, for purposes of clarification, EPA interprets the following provisions in R307-335 (in addition to any other request for an AMOC that may arise outside of these provisions) as being subject to the requirement in R307-335-7(1) for EPA concurrence, and thus subject to EPA’s general statement about alternate methods of control, above:

1. In R307-335-4(3), the provision that reads, “or by an alternate means approved by the executive secretary.”

2. In R307-335-7(3), the provision that reads, “or approved by the executive secretary.”

In addition, we interpret R307-335-8(2), which requires an owner or operator to repair a malfunctioning control device within 15 days or other period approved by the executive secretary, as not excusing any period of violation of the control requirements in R307-335.

J. R307-340. “Ozone Nonattainment and Maintenance Areas: Surface Coating Processes.”

Utah made additions and modifications to clarify the purpose, applicability, definitions, general provisions for volatile organic compounds, alternate method of control provisions, and compliance schedule. Additionally, Utah deleted language because it is not needed in this rule or any other rule. Utah has made administrative revisions to the rule’s title where the reference to

Salt Lake and Davis Counties was simply replaced with “ozone maintenance area.” EPA is proposing to approve these changes. However, for purposes of clarification, EPA interprets the following provisions in R307-340 (in addition to any other request for an AMOC that may arise outside of these provisions) as being subject to the requirement in R307-340-16(1) for EPA concurrence, and thus subject to EPA’s general statement about alternate methods of control, above:

1. In R307-340-4(4), the provision that reads, “or by an alternate means approved by the executive secretary.”
2. In R307-340-4(5)(a), the provision that reads, “Sources may request approval for longer times for compliance determination from the executive secretary.”
3. In R307-340-15(1), the provision that reads, “or an alternative method approved by the executive secretary.”
4. In R307-340-15(2), the provision that reads, “or an alternative method approved by the executive secretary or equivalent method.”
5. In R307-340-16(3), the provision that reads, “or approved by the executive secretary.”

In addition, we interpret R307-340-16(2), which requires an owner or operator to repair a malfunctioning control device within 15 days or other period approved by the executive secretary, as not excusing any period of violation of the control requirements in R307-340.

K. R307-341. “Ozone Nonattainment and Maintenance Areas: Cutback Asphalt.” Utah made additions and modifications to simply clarify the purpose, applicability, definitions, limitations on use of cutback asphalt, recordkeeping, and compliance schedule. Additionally, Utah deleted obsolete language because it is not needed in this rule or any other rule. Utah has

made administrative revisions to the rule's title where the reference to Salt Lake and Davis Counties was simply replaced with "ozone maintenance area." EPA is proposing to approve the deletion of the obsolete language and other minor revisions.

L. R307-342. "Ozone Nonattainment and Maintenance Areas: Qualification of Contractors and Test Procedures for Vapor Recovery Systems for Gasoline Delivery Tanks." Utah made additions and modifications to clarify the purpose, applicability, general requirements, and alternate method of control provisions. Additionally, Utah deleted language because it is not needed in this rule or any other rule. Utah has made administrative revisions to the rule's title where the reference to Salt Lake and Davis Counties was simply replaced with "ozone maintenance area." EPA is proposing to approve these changes. However, for purposes of clarification, EPA interprets the following provision in R307-342 (in addition to any other request for an AMOC that may arise outside of this provision) as being subject to the requirement in R307-342-7(1) for EPA concurrence, and thus subject to EPA's general statement about alternate methods of control, above:

1. In R307-342-7(3), the provision that reads, "or approved by the executive secretary."

In addition, we interpret R307-342-7(2), which requires an owner or operator to repair a malfunctioning control device within 15 days or other period approved by the executive secretary, as not excusing any period of violation of the control requirements in R307-342.

V. Proposed Action

As described above, we are proposing the following with respect to the State's March 22, 2007 submittal:

1. We are proposing to approve the State's maintenance demonstration for the 1997 8-hour

ozone NAAQS for Salt Lake and Davis Counties, but, in the alternative, to disapprove the maintenance demonstration should comments convince us that approval is not consistent with the Clean Air Act. (See section III.B above.)

2. We are proposing to approve the rest of the State's 1997 8-hour ozone maintenance plan for Salt Lake and Davis Counties, except for the following aspects, which we are proposing to disapprove:

a. Those contingency measures listed in the State's maintenance plan that are voluntary in nature, and the contingency measure described in the maintenance plan as "Establish an Offset Ratio for NO_x." (See section III.D above.)

b. The State's proposal to remove from the SIP the VOC RACT approval orders for Hill Air Force Base. (See section III.E above.)

c. The State's proposal to remove from the SIP the NO_x RACT limits for the PacifiCorp Gadsby Power Plant. (See section III.E above.)

d. Section 5.g of the maintenance plan, which indicates that the employer-based trip reduction program is included as part of the plan. (See section III.E above.)

3. We are proposing to take no action on R307-101-2 because we have already acted on a later version of the definitions. (See section IV.A above.)

4. We are proposing to approve R307-110-13, but only to the extent we are proposing to approve the 1997 8-hour ozone maintenance plan. (See section IV.B above.)

5. We are proposing to disapprove R307-320, the employer-based trip reduction program. (See section IV.C above.)

6. We are proposing to approve R307-325, R307-326, R307-327, R307-328, R307-335, R307-

340, R307-341, and R307-342, subject to our interpretation of these rules. (See sections IV.D through L above.)

EPA is soliciting public comment on its proposed rulemaking as discussed in this document. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to EPA as discussed in this notice.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and disapproves state law that does not, and it does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

Approval and Promulgation of Air Quality Implementation Plans; Utah; Maintenance Plan for the 1997 8-Hour Ozone Standard for Salt Lake County and Davis County, page 33 of 33

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq

Dated: December 13, 2012.

James B. Martin,
Regional Administrator,
Region 8.

[FR Doc. 2012-31562 Filed 12/31/2012 at 8:45 am; Publication Date: 01/02/2013]